WA 22/2004
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE(ACTING)
THE HON'BLE MR. JUSTICE B.P. KATAKEY

The Railways administration has preferred this appeal against the order dated 4.11.2003 passed by the learned Single Judge in W.P.' No. 9073/2003 whereby and where under the Railways authorities are directed to reweigh the materials in question, i.e., 'Condemned brake block' within 15 days, in presence of the petitioner and to release the same and also directed to release the vehicle carrying such materials without any harassment to the petitioner.

We have heard Mr. S. Sarma, learned standing counsel, Railways for the appellants. None appears for the respondent.

The respondent herein filed a writ petition praying for a direction to the Railway administration to release the Truck bearing No. ASK-2847 along with the contemned brake block (11 m.ton) along with other seized materials within a specific period of time. The learned Single Judge upon hearing learned counsel for the parties, vide impugned order dated 4.11.03 issued a direction to reweigh the materials and to release the same along with vehicle carrying such materials.

It appears from the statements made in the writ petition filed by the Respondent that the factums of pendency of a criminal proceeding involving the said vehicle as well as materials seized has not be disclosed by the respondent. It also appears from the seizure list dated 20.9.03 that the vehicle in question was seized along with materials carried therein in connection with Lumding R.P.F. (Post) Case No.5/03 under section 3(a) of Railway Property (Unlawful Protection) Act , 1966. It also appears from the pleadings in the writ appeal that in the said criminal proceeding, the respondent have been chargesheeted and such criminal case is still pending for disposal.

Since the materials which were directed to be released after reweigh and also the vehicle in question involved in a criminal proceeding, in our considered view, the learned Single Judge ought not to have issued the above direction. The learned Single Judge has passed such order because of suppression of material facts relating to pendency of a criminal proceeding against such materials as well as the vehicle.

Hence while interfering with the order dated 4.11.2003 by setting aside the direction contained therein, we dispose of the present appeal with the observation that the release of materials as well as vehicle involved in the said criminal case shall be in accordance with the order that may be passed by the criminal court on the basis of the application that may be filed by the parties in accordance with law.

The writ appeal stands disposed of. No costs.